



12 CFR Part 324

RIN 3064-AF66

Regulatory Capital Rule: Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Correcting amendment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) published an interagency final rule in the *Federal Register* on November 1, 2019, that revises the criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations. This final rule aligns the applicability of the enhanced supplementary leverage ratio for purposes of the prompt corrective action provisions in the FDIC's capital rule to its intended scope.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation, along with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the agencies) published a final rule in the *Federal Register* on November 1, 2019, that revises the criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations (tailoring rule).¹ Under the tailoring rule, the supplementary leverage ratio of 3 percent applies to certain banking organizations and their subsidiaries, while global systemically important banking organizations (GSIBs) and their subsidiaries are subject to the enhanced supplementary leverage ratio. Under the agencies’ prompt corrective action (PCA) provisions of the capital rule, depository institution subsidiaries of GSIBs must maintain a supplementary leverage ratio of 6 percent or greater for purposes of the “well capitalized” PCA category.²

In promulgating the tailoring rule, the agencies stated in the preamble that the enhanced supplementary leverage ratio is a Category I capital standard, which is applicable only to U.S. GSIBs and their depository institution subsidiaries. Specifically, the preamble to the tailoring final rule provides that the final rule maintains the capital requirements applicable to U.S. GSIBs and their depository institution subsidiaries. These requirements generally reflect agreements reached by the BCBS. U.S. GSIBs and their depository institution subsidiaries must calculate risk-based capital ratios using both the advanced approaches and the standardized approach and are subject to the U.S. leverage ratio. As stated in the preamble, such banking organizations are also subject to the requirement to recognize elements of AOCI in regulatory capital; the requirement to expand the capital conservation buffer by the amount of the countercyclical capital

¹ Regulatory Capital Rule: Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 FR 59230 (Nov. 1, 2020).

² See 12 CFR part 324, subpart H.

buffer, if applicable; and enhanced supplementary leverage ratio standards.³ In addition, U.S. GSIBs are subject to the GSIB surcharge. Application of these Category I capital requirements will continue to strengthen the capital positions of U.S. GSIBs and reduce risks to financial stability.

In promulgating the tailoring rule, the agencies, however, inadvertently omitted amending the PCA provisions of the capital rule to reflect the tailoring rule, including the well capitalized PCA category. This PCA provision currently states that beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC will be deemed to be well capitalized if the FDIC-supervised institution satisfies 12 CFR 324.403(b)(1)(i)(A) through (E) and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of 12 CFR 324.403(b)(1)(ii), a covered BHC means a U.S. top-tier bank holding company with more than \$700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y-15).⁴

This final rule aligns the applicability of the enhanced supplementary leverage ratio to its intended scope covering only global systemically important banking organizations and their subsidiaries as described in the preamble to the tailoring rule. Specifically, this final rule revises § 324.403(b)(1)(ii) by removing the definition of covered BHC and provides that an FDIC-supervised institution that is a subsidiary of a global systemically important bank holding company as defined in 12 CFR 217.402 will be considered well-capitalized for purposes of the PCA provisions of the capital rule if it

³ 84 FR 59230, 59277.

⁴ 12 CFR 324.403(b)(1)(ii).

satisfies certain capital requirements and has a supplementary leverage ratio of 6.0 percent or greater.

A. Administrative Procedure Act

The FDIC is issuing this final rule without prior notice, the opportunity for public comment, and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).⁵ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁶

The FDIC finds that the public interest is best served by implementing this final rule as of the date of *Federal Register* publication. This final rule’s technical correction will correct the applicability of the enhanced supplementary leverage ratio to remove any potential confusion about the regulatory capital requirements applicable to the largest insured depository institutions so that such institutions can focus their attention on the continued intermediation of credit. For purposes of the well capitalized PCA category, this final rule aligns the applicability of the enhanced supplementary leverage ratio to its intended scope covering only global systemically important banking organizations and their subsidiaries as described in the preamble to the tailoring rule. The FDIC finds that there is good cause consistent with the public interest to issue this final rule without notice and comment.

Additionally, the APA requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency

⁵ 5 U.S.C. 553.

⁶ 5 U.S.C. 553(b)(B).

for good cause.⁷ Because the final rule relieves a restriction, the final rule is also exempt from the APA's delayed effective date requirement.⁸ Additionally, the FDIC finds good cause to publish the final rule correction with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.⁹ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁰

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹¹

The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹²

⁷ 5 U.S.C. 553(d).

⁸ 5 U.S.C. 553(d)(1).

⁹ 5 U.S.C. 801 *et seq.*

¹⁰ 5 U.S.C. 801(a)(3).

¹¹ 5 U.S.C. 804(2).

¹² 5 U.S.C. 808.

For the same reasons set forth above, the FDIC adopts this final rule without the delayed effective date generally prescribed under the Congressional Review Act. Given the importance of aligning the PCA provisions of the capital rule to the tailoring rule, the FDIC believes that delaying the effective date of this final rule would be contrary to the public interest. As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule correction does not contain any information collection requirements therefore the FDIC will make no submissions to OMB in connection with this final rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹³ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹⁴ The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the FDIC has determined general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore good cause exists to not issue a notice of proposed rulemaking. Accordingly, the FDIC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to this final rule.

¹³ 5 U.S.C. 601 *et seq.*

¹⁴ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. *See* 13 CFR 121.201.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),¹⁵ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.¹⁶

As stated above, this final rule's technical correction will correct the applicability of the enhanced supplementary leverage ratio to remove any potential confusion about the regulatory capital requirements applicable to the largest insured depository institutions so that such institutions can focus their attention on the continued intermediation of credit. In addition, for purposes of the well capitalized PCA category, this final rule aligns the applicability of the enhanced supplementary leverage ratio to its intended scope covering only global systemically important banking organizations and their subsidiaries as described in the preamble to the tailoring rule. As such, this final rule does not impose any additional reporting, disclosures, or other new requirements on

¹⁵ 12 U.S.C. 4802(a).

¹⁶ 12 U.S.C. 4802.

IDIs. Therefore, the FDIC finds that the requirements of RCDRIA do not apply and this final rule will be published with an immediate effective date.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁷ requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. In light of this requirement, the FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital, Capital adequacy, Reporting and recordkeeping requirements, Risk, Savings associations.

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC corrects chapter III of title 12 of the Code of Federal Regulations by making the following correcting amendment:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111-203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note), Pub. L. 115-174; section 4014, Pub. L. 116-136, 134 Stat. 281 (15 U.S.C. 9052).

2. Section 324.403 is amended by revising paragraph (b)(1)(ii) to read as follows:

¹⁷ Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

§ 324.403 Capital measures and capital category definitions.

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(b) * * *

(1) * * *

(ii) An FDIC-supervised institution that is a subsidiary of a global systemically important bank holding company will be deemed to be well capitalized if the FDIC-supervised institution satisfies paragraphs (b)(1)(i)(A) through (E) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph (b)(1)(ii), global systemically important bank holding company has the same meaning as in 12 CFR 217.402.

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Federal Deposit Insurance Corporation.
Dated at Washington, DC, on November 4, 2020.

James P. Sheesley,
Assistant Executive Secretary.

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